

Appln No. 09/603,834

Amdt date January 23, 2004

Reply to Office action of September 10, 2003

REMARKS/ARGUMENTS

The above identified patent application has been amended and reconsideration and reexamination are hereby requested.

Claims 2 - 5, 7 and 9 - 23 are now in the application. Claims 21 and 23 have been amended.

The Examiner has rejected Claims 2 - 5, 7 and 9 - 23 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. In particular, the Examiner states that a clear understanding of the term "repetitively" is needed and has noted a spelling informality in Claim 23.

The Applicants have amended Claims 21 and 23 to delete the word "repetitively". The Applicants submit that Claims 2 - 5, 7 and 9 - 23 particularly point out and distinctly claim the subject matter which the Applicants regard as the invention.

The Examiner has also rejected under 35 U.S.C. §103: Claims 2 - 4, 7, 9 - 17 and 19 -23 as being unpatentable over Nappholz et al. in view of de Coriolis et al.; Claim 5 as being unpatentable over Nappholz et al. in view of de Coriolis et al. and further in view of Fountain et al.; Claim 18 as being unpatentable over Nappholz et al. in view of de Coriolis et al. and further in view of Wyborny et al.

The Applicants amended Claim 21 calls for (underlining added for emphasis) ... the first transmitter/receiver unit beginning data transmission by sending a triggering signal to the second transmitter/receiver unit at the end of a first pre-determined time interval, ... wherein the external apparatus

Appln No. 09/603,834

Amdt date January 23, 2004

Reply to Office action of September 10, 2003

implements a first plausibility check of data transmitted by the first transmitter/receiver unit; and wherein a first acknowledgment is sent by the second transmitter/receiver unit to the first transmitter/receiver unit upon receipt of the triggering signal, the first acknowledgment including: ... a second item of control information for control of the first transmitter/receiver unit such that, in the event of lack of plausibility of the data transmitted, the second item of control information includes a first control signal for triggering a renewed transmission of data by the first transmitter/receiver unit.

The Applicants amended Claim 23 calls for (underlining added for emphasis) ... beginning data transmission with a triggering signal sent by the first transmitter/receiver unit to the second transmitter/receiver unit at the end of a first pre-determined time interval; and ... implementing by the external apparatus a first plausibility check of data transmitted by the first transmitter/receiver unit; and sending a first acknowledgment by the second transmitter/receiver unit to the first transmitter/receiver unit upon receipt of the triggering signal; wherein the first acknowledgment includes: ... a second item of control information for control of the first transmitter/receiver unit such that, in the event of lack of plausibility of the data transmitted, the second item of control information includes a first control signal for triggering a renewed transmission of data by the first transmitter/receiver unit.

Appln No. 09/603,834

Amdt date January 23, 2004

Reply to Office action of September 10, 2003

The Applicants submit that the invention as claimed in Claims 21 and 23 is neither taught, described or suggested in Nappholz et al, even in view of de Coriolis et al.

Nappholz et al, while providing for an implant which can transfer data to an external device, does not disclose, as noted by the Examiner, implementing a first plausibility check.

Further, while de Coriolis et al. may provide for an implantable device including an implant device receiver and transmitter which communicates with an external receiver and transmitter, the Applicants submit that the de Coriolis et al. data transmission between an implant and the external device is not initiated by the implant but by the external device, (see paragraphs [0032], [0037], [0038], [0050], [0051], [0073] and [0091] through [0091], and also claims 1, 3, 5, 8, 10, 11, 13 and 14, which describe the initiation aspect of the de Coriolis et al. communication process). Telemetry means 28 of the cardiac device is only put in a partially active state which enables telemetry means 28 to detect energy by an external device. That means, that up to that point telemetry means 28 does not transmit anything. On the contrary, telemetry means 28 in its partially active state is totally quiet and is only listening. The transmission protocol according to de Coriolis et al. provides a transmitted initiation command sent out by the external device to the implant and not the other way around, as in accordance with the present invention.

Accordingly, the Applicants submit there is no suggestion to combine the teachings of Nappholz et al. with the teachings of de Coriolis et al., since the device according to de Coriolis

Appln No. 09/603,834

Amdt date January 23, 2004

Reply to Office action of September 10, 2003

et al. does not provide for or suggest any transmission initiating signal sent out by the implant to an external device, and further, any transmission initiating signal sent out by the implant which can be checked for plausibility by the external device. As such, the first signal sent from the de Coriolis et al. external device to the implant can not further contain a control signal for triggering a renewed transmission.

Therefore, the Applicants submit that Claims 21 and 23 are not unpatentable over Nappholz et al. in view of de Coriolis et al.

Claim 22 is dependent on Claim 21. Claims 2 - 5, 7, and 9 - 20 are dependent on Claim 23. As such, these claims are believed allowable based upon Claim 21 and 23 respectively.

Accordingly, in view of the above amendment and remarks it is submitted that the claims are patentably distinct over the prior art and that all the rejections to the claims have been overcome. Reconsideration and reexamination of the above Application is requested.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP



By

Richard J. Paciulan

Reg. No. 28,248

626/795-9900

RJP/cah

CAH PAS546688.1--01/23/04 9:20 AM